

House Research Act Summary

CHAPTER: 30

SESSION: 2015 Regular Session

TOPIC: Family law; custody and parenting time; child support; Uniform Deployed Parents Custody and Visitation Act

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Date: May 12, 2015

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Overview

This act amends various statutes related to family law. The act came out of various groups that met throughout 2013, 2014, and 2015 in an informal group to build consensus among multiple stakeholders who had an interest in seeing changes to portions of Minnesota's custody, parenting-time, child support, and divorce laws.

This law re-writes the best interest factors in section 518.17 that the court uses to determine custody and parenting time for married and unmarried parents. This law also incorporates part of the notices provided in "Appendix A" which is attached to family law orders issued by the court so that those items must now be included in the court's order. This act also amends the judgment interest rate on family court actions; clarifies the 25 percent parenting time presumption; allows income tax dependency exemptions may be allocated by the court in child support and custody matters; modifies the procedures and rights of parents to compensatory parenting time; allows post-judgment spousal maintenance modification in certain circumstances; and allows alternative effective dates in child support and spousal maintenance modifications in certain situations.

Articles 2 through 6 of this act also create a chapter called the Uniform Deployed Parents Custody and Visitation Act which govern how parties can enter agreements for parenting and custody, including visitation with a non-parent and communication with a deployed parent, prior to and during the deployment of a parent who is in the armed services.

Section**Article 1****Overview**

This article re-writes the best interest factors in section 518.17 that the court uses to determine custody and parenting time for married and unmarried parents. This article also moves provisions in “Appendix A” which is attached to family law orders issued by the court so that those items must now be included in the court’s order. This act also has sections that amend the judgment interest rate on family court actions; clarify the 25% parenting time presumption; allow income tax dependency exemptions may be allocated by the court in child support and custody matters modifies the procedures and rights of parents to compensatory parenting time; allows post-judgment spousal maintenance modification in certain circumstances; and allows alternative effective dates in child support and spousal maintenance modifications in certain situations.

- 1** **Custody disputes.** Clarifies that in custody and parenting time disputes between unmarried parents the court should use the best interest factors in section 518.17, which are the same best interest factors used to determine custody and parenting time between parents who were married when the child was born.
- 2** **Preparation.** Requires an individual preparing a custody evaluation to include in the report to the court the stated preferences of the parties as to the custody and parenting time arrangement. This section removes a requirement for the report to contain considerations for factors on joint legal custody, a section of the law which is repealed Article 1, Section 13.
- 3** **The best interest of the child.** Removes the previous language that provides the thirteen best interest factors considered by the court to determine custody and parenting time decisions between parents, including additional directions to the court not to weigh one factor over another.

This section provides twelve factors for the court to consider in determining custody between parents and then provides directions on how the court should consider those factors and presumptions that should be made in making those decisions.

TWELVE BEST INTERST FACTORS

The act provides the following twelve factors as the basis for determining custody and parenting time:

1. A child’s physical, emotional, cultural, spiritual, and other needs and the effect of the proposed custody and parenting time arrangement on the child’s needs and development

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2. Any special needs the child has that require special parenting time arrangements or access to services
3. Preference of the child, if the child is of a sufficient age and maturity to express an independent, reliable preference
4. Whether domestic abuse has occurred as defined in section 518B.01, either between the parents or in the parents households or relationships and the implications to the child's safety and well-being
5. The physical, mental, or chemical health issues of a parent that affects the child's safety or developmental needs
6. The history and nature of each parent's participation in providing care for the child
7. The willingness and ability of each parent to provide ongoing care of the child, including meeting developmental, emotional, spiritual, and cultural needs and to be consistent in their parenting time
8. The effect of a change to the child's home, school, and community
9. The effect of the proposed arrangement on the child's ongoing relationships between the child and the parents, siblings, and significant persons in the child's life
10. The benefit to the child in maximizing the parenting time with each parent and the detriment of limiting parenting time with either parent
11. The ability of the parents to support a continuing relationship with the other parent, except in cases where domestic abuse has occurred
12. The willingness and ability of the parents to cooperate in rearing their child and to keep their children out of parental conflict and utilize methods to resolve disputes regarding raising the child

APPLICATION AND PRESUMPTIONS

The section provides the following principals to be considered in the application of the best interest factors.

1. Provides language similar to what is currently in law in section 518.17 that says the court cannot use one factor to the exclusion of others, that the court shall consider the factors to be interrelated, and that the court shall provide a detailed finding on each factor based on the evidence presented to determine custody and parenting time.
2. Provides that the best interest of the child is to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents.
3. Requires the court to start with the presumption that the parents are capable of having a nurturing relationship with their children unless there is a reason to believe otherwise, and to consider cultural differences in how parents interact with their children.
4. Prevents the court from considering conduct of a parent that does not affect the party's relationship with the child similar to what is currently in section 518.17.
5. Prevents a disability that is covered by the Minnesota Human Rights Act, which include physical, sensory, and mental impairments, from being determinative of the child's custody.

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6. Requires the court to consider evidence of a false report of child abuse in determining the best interest of the child, which is currently in law but is repealed in Article 1, section 13.
7. Provides that there is no presumption for or against joint physical custody except where domestic abuse has occurred, similar to what is currently in section 518.17.
8. Provides that physical custody does not require an absolute division of time.
9. Provides that joint legal custody can be considered a rebuttable presumption when one or both parties requests it, except where domestic abuse has occurred and that disagreement over custody is not a basis to determine the parties cannot cooperate under the best interest factors. This provisions is similar to what is currently in section 518.17.

4 Custody order. Makes conforming changes to the law to indicate that the rights previously listed in section 518.17, subdivision 3, are now listed in section 518.17, subdivision 3a, and removes the existing language that appears in section 2, creating section 518.17, subdivision 3a. This section also requires the court to include the notice in the court's order. This information and notice was previously included in an attached "Appendix A" to a court's order.

5 Contents on notice. Provides the notice that the court must include in each court order and the form in which the notice should be provided. The rights and access to the child are the same as what was previously included in Appendix A, but now also include reasonable "electronic contact" with the minor child.

6 General. Clarifies that the presumption that a parent is entitled to an award of 25% of the parenting time is a minimum presumption in determining child support.

7 Remedies. Provides that compensatory parenting time can be awarded when a substantial amount of court ordered time has been unavailable unless it would not be in the child's best interest to award the compensatory time.

This section requires the court to award compensatory time when the denial of the time was repeated and intentional except where the denial was to protect the child's physical and emotional health. This applies to both court ordered parenting time and time that is ordered through a parenting time expeditor. This section allows for the court to asses civil penalties, bonds, attorney fees, and costs.

The additional civil remedies in this section, including costs and attorney's fees, become a mandatory award on the second court finding that a party has repeatedly and intentionally withheld parenting time.

This section requires that notice of the rights and remedies in this section are included in each court order for parenting time.

8 Private agreement. Allows the parties to agree to post-judgment spousal maintenance modification or limit the ability to modify. This section allows the parties to modify spousal maintenance by agreement when the parties have previously limited the ability to modify.

9 Providing income information. Clarifies and expands the tax documents that can be provided in child support cases for the financial affidavit requirements. This section allows

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the court to order compensation and attorney's fees and costs when a party fails to provide the financial documents required up to three years after the documents were due.

- 10** **Income tax dependency exemptions.** Amends § 518A.38, by adding subd. 7. Paragraph (a) clarifies that a court has the authority to allocate income tax dependency exemptions. Provides that if the court allocates dependency exemptions to the parent who has physical custody of the child less than one-half of the year, then the other parent must execute the IRS document releasing claim to the child as a dependent.

Paragraph (b) lists the factors the court must consider when determining the allocation. Factors include the financial resources of each party, how the allocation impacts a parent's ability to provide for the child's needs, whether one or both parents would receive a tax benefit from the dependency exemption, and which parent is providing health care coverage and whether that parent will benefit from a premium assistance tax credit or premium subsidy.

Paragraph (c) provides that the court may place conditions on a party's right to claim an exemption, including the requirement to remain in compliance with a child support order.

Paragraph (d) states that absent an agreement by the parties a parent with less than ten percent parenting time is not entitled to receive a dependency exemption.

Paragraph (e) requires a showing of substantial change in the factors listed in paragraph (b) before the allocation may be modified.

Paragraph (f) requires the court to make findings supporting its allocation decision, if the allocation is contested.

Paragraph (g) establishes remedies if a party claims an exemption in violation of a court order or applicable law, or fails or refuses to provide the properly executed declaration releasing the party's claim to a child as a dependent.

- 11** **Modification.** Allows for an alternative effective date for maintenance and child support in motions for modification. Under current law the court can only go back as far as the date the motion for modification was served. This section allows an alternate start date for motions for modification if the parties enter into a binding agreement for an alternative effective date.

- 12** **When owed; rate.** Provides the judgment interest rate for awards in family law actions, regardless of the amount of the award. The interest rate is calculated by the state court administrator annually and is calculated as a simple interest per annum. This section also provides that the court can order or the parties can agree to a lower interest rate, or no interest rate, if it avoids causing unfair hardship to the debtor, however this does not include child support or spousal maintenance arrears. This section provides that judgment interest in Minnesota statute for judgment awards over \$50,000, which is ten percent per year, does not apply to family court judgments.

- 13** **Repealer.** Repeals subdivision 1a, requiring the court to consider a false allegation of child abuse, as the language has now been placed in subdivision 1. (See section 3) This section also repeals section 518.17, subdivision 2, which provided factors that the court must consider when joint physical or legal custody is sought. The majority of the considerations in this subdivision are incorporated into section 3 of the article—the best interest factors and the application of the best interest factors.

Section**Article 2****Overview**

This article provides the title, definitions, jurisdiction, and notice requirements for the Uniform Deployed Parents Custody and Visitation Act.

- 1 Short title.** Allows Chapter 518E to be cited as the Uniform Deployed Parents Custody and Visitation Act.
- 2 Definitions.** Provides definitions for terms used in Chapter 518E. Some important terms include:
 - “Caretaking authority” means the right to live with and care for a child including physical custody and parenting time.
 - “Custodial responsibility” means all caretaking and decision making authority for a child including physical custody, legal custody, and parenting time.
 - “Decision making authority” means the power to make important decision for a child including education, religion, medical, travel, and extracurricular activities, but does not include decisions related to caretaking authority.
 - “Deployed parent” means a parent of a child or a person who has custody or visitation with a child who is deployed or who has been notified of deployment.
 - “Deployment” means military service that requires movement for more than 90 days but less than 18 months and does not allow the family or dependents to accompany the service member.
 - “Limited contact” means authority of a non-parent to visit a child for limited time including taking the child out of the child’s primary residence.
 - “Non-parent” means an individual other than a deployed parent.
 - “Other parent” means the parent of a child who is not deployed who has a child in common with a deployed parent.
 - “Uniformed service” means active and reserve components of the Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, state National Guard, or a commissioned corps of the United States Public Health Service or National Oceanic and Atmospheric Administration.
- 3 Remedies for noncompliance.** Provides the court with the ability to assess reasonable attorney fees and costs and order other appropriate relief when a party acts in bad faith or intentionally fails to comply with the act or fails to follow a court ordered issued under the act.
- 4 Jurisdiction.** Requires a court in Minnesota to have jurisdiction over the case under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which determines the jurisdiction for custody between jurisdictions including states and tribes. This section

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indicates that a parent's deployment does not change their residence for the purposes of determining custody for a new or existing case in Minnesota or another state. Nothing in this section changes the ability of the court to exercise temporary emergency jurisdiction under the UCCJEA.

- 5 **Notification required of deploying parent.** Requires a deploying parent to provide written notice or email to the other parent of the deployment within seven days of receiving notice and then provide a written notice or email of how the parent will fulfill their parenting time while on deployment. This section provides that when the deploying parent does not have access to the other parents address they can send the notice to the court but the notice is not needed when the parents are residing together.
- 6 **Duty to notify of change of address.** Requires a parent who has custody or parenting time during the deployment to notify the court and deployed parent, and anyone else with custody, parenting time, or visitation of a change of address, unless a court order has prohibited disclosure and then the new address only needs to be made to the court.

Article 3

Overview

This article provides the procedure for parents and nonparents to reach an agreement on custody and visitation while a parent is deployed and how that agreement terminates and is modified prior, during and after deployment.

- 1 **Form of Agreement.** Provides a process for a written agreement for custody and visitation during a parent's deployment and specifies that the parents or other caretaker cannot modify child support through a written agreement and that failing to include some provisions does not invalidate an agreement made pursuant to this section.
- 2 **Nature of authority created by agreement.** Provides that a parent or non-parent who has custody or parenting time under the agreement that is in effect during deployment does not have a continuing right to custody or visitation after the agreement has been modified by a court, modified by subsequent agreement, or after the agreement has terminated. This section does give standing to a non-parent who has rights of custody or visitation under the agreement during the parent's deployment, as a means to enforce those rights until those rights have been modified in a subsequent agreement or by a court order, or when the agreement has been terminated.
- 3 **Modification of an agreement.** Provides that the parents or non-parents who have custody or parenting time may modify an agreement that has been made in writing prior to deployment or through written or electronic means after the deployment and that all parties with custody or parenting time must agree.
- 4 **Power of attorney.** Allows a deploying parent to grant power of attorney and with that custody and parenting time to a non-parent during the deployment when there is no other parent who has custody or parenting rights pursuant to Minnesota law.

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- 5 Filing agreement or power of attorney with court.** Requires an agreement reached under this section to be filed with a court if there is a court case or order already related to custody, parenting time, or child support of a child who is the subject of the agreement or power of attorney.

Article 4**Overview**

This article provides the jurisdictional procedure for granting court ordered custody and parenting time during a parent's deployment.

- 1 Definitions.** Provides a definition for “close and substantial relationship” which means a relationship where a significant bond exists between a child and a non-parent.
- 2 Proceeding for custody order.** Allows a parent to motion the court for custody and parenting time and the court to issue an order for custody and parenting time prior to and up until the end of the deployment unless it is barred by the Service Members Civil Relief Act but does not allow the court to enter a permanent order on custody and parenting time unless the deployed parent agrees to it. The requirements for jurisdiction under the UCCJEA are still applicable.
- 3 Expedited evidentiary hearing.** Requires the court to grant an expedited evidentiary hearing within 30 days when a party files for custody or parenting time and a parent is deploying. The court must base a decision on custody and parenting time on existing Minnesota law for custody and parenting time determinations, the best interest of the child factors, under section 518.17. This section also shortens the length of time the court has to issue an order from 90 days to 30 days.
- 4 Testimony by electronic means.** Allows the court to accept testimony via electronic means unless the court finds good cause to require a personal appearance.
- 5 Effect of prior judicial order or agreement.** When the parents have already specified a plan for deployment in a previous court order or in an agreement reached by the parents the court shall uphold the agreement or prior order unless the court finds that a modification is appropriate under the modification laws of the state or that the agreement of the parties on custody and parenting time during the deployment is not in the best interest of the child.
- 6 Grant of caretaking or decision-making authority to nonparent.** Allows the court to grant custody and parenting time to a non-parent who is either a family member or another adult who has a close and substantial relationship with the child. This section requires that the other parent either agree to the custody or parenting time or that the court limit the custody and parenting time of the non-parent to the amount of time already granted to a deployed parent under a permanent custody order or that the deployed parent habitually spent with the child. This section also allows for travel time to be added and to allow a grant of some of the rights of legal custody to a non-parent when it is in the child's best interest.

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- 7** **Grant of limited contact.** Allows the court to grant visitation with a non-parent who is a family member of the child or an individual with whom the child has a close and substantial relationship when the deploying parent requests it and the court finds it is not contrary to the child's best interest. This section would be administered according to Minnesota law on visitation for non-parents.
- 8** **Nature of authority created by custody order.** Provides that a court ordered grant of custody or parenting time, including visitation with a non-parent, terminates 60 days after the deployed parent returns and notifies the other parent or by court order or agreement. It does not create an ongoing right to custody or parenting time outside of what is available under other laws of the state.
- 9** **Content of custody order.** Requires the court to include in the order that the custody or parenting time awarded under this section is for a limited duration, identify and address any issues related to domestic violence, and appoint a parenting time expeditor. This section also provides other considerations the court must include when they apply including the custody and parenting time of the parents and nonparents and how communication will occur between the child and the deployed parent during deployment.
- 10** **Order for child support.** Provides that when the court has jurisdiction it can issue a temporary child support order under the Minnesota child support statutes if a court order under this chapter or an agreement made pursuant to this chapter has been filed with the court.
- 11** **Modifying or terminating a grant of custodial responsibility to nonparent.** Allows the parties to modify an order made under this chapter.
- 12** **Motion for amended findings and order.** Allows for a motion to amend an order under the Minnesota Rules of Civil Procedure.

Article 5**Overview**

Provides the procedure for termination of custody arrangements after the deployed parent returns from deployment.

- 1** **Procedure for terminating grant of custodial responsibility established by agreement.** Allows the parties to agree to terminate an agreement for custody and parenting time made under this chapter. This section also provides that an agreement to terminate can be put into the agreement so that the agreement will terminate on the date agreed or 60 days after the deploying parent gives notice that they have returned from deployment. This section requires the agreement to terminate to be filed with the court when the agreement for custody and parenting time under this chapter was previously filed with the court.
- 2** **Return from deployment; notification requirements.** Provides the requirement for notice from the deployed parent to the other parent when they deployment is ending and to the court.

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- 3** **Consent procedure for terminating grant of custodial responsibility established by court order.** Allows the parents to agree to terminate an order for a grant of custody under this chapter at any point after the deployed parent returns by filing notice of termination with the court.
- 4** **Visitation before termination of grant of custodial responsibility.** Requires the court to grant a returning deployed parent reasonable contact with the child until an agreement or order is established, unless it is contrary to the best interests of the child.
- 5** **Termination by operation of law of grant of custodial responsibilities established by court order.** Provides that the order for custody and parenting time issued under this chapter terminates 60 days after notice of the end of the deployment provided by the deployed parent or comparable source and that proceedings to prevent the termination are governed by the custody and parenting time modification statutes.

Article 6**Overview**

This article provides the application and effective date for this chapter.

- 1** **Uniformity of application and construction.** Provides that the court should construe this chapter with consideration to the promotion of uniformity of the law as it is applied in other states.
- 2** **Relation to electronic signatures in global communication and national commerce act.** Provides that this modifies and suppresses certain aspects of the federal law on electronic signatures.
- 3** **Savings clause.** Provides that application of this act does not apply to court orders for custody and parenting time during deployment that were entered before August 1, 2015.